

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FAVOURED DEVELOPMENTS LIMITED,

No. C06-02752 MJJ

Plaintiff,

**ORDER GRANTING LEAVE TO FILE  
MOTION FOR DE NOVO REVIEW AND  
SETTING BRIEFING SCHEDULE**

v.

ALTON A. LOMAS,

Defendant.

**INTRODUCTION**

Before the Court is Defendant's Motion For An Order Granting Defendant Leave To File A Notice Of Motion And Motion For De Novo Review Of The Report And Recommendation On Defendant's Motion For Attorneys' Fees And Costs; For Expansion Of Record, And Amended Written Objection To Magistrate Judge's Report And Recommendation On Defendant's Motion For Attorneys' Fees And Costs In Accord With 28 U.S.C. § 636(b)(1) And Fed. R. Civ. P. 72(b). (Docket No. 60.)<sup>1</sup>

The Court finds that good cause exists for granting leave to Defendant to file his proposed motion attached as Exhibit A to the August 10, 2007 Declaration of Lawrence A. Callaghan. (Docket No. 61, Exhibit A.) Within ten days of the Magistrate's Report and Recommendation ("R&R") recommending that the Court deny all fees and costs, Defendant filed written objections


<sup>1</sup> The Court **GRANTS** Plaintiff's administrative motion for leave to file a surreply (Docket No. 72), and has considered that surreply in resolving the instant Motion.

1 (“Objections”) to the R&R. The Objections stated that they were brought under Fed. R. Civ. P.  
2 72(a), which governs challenges only to Magistrate rulings on non-dispositive motions. The  
3 Objections were not accompanied by a motion for de novo review or a motion for expansion of the  
4 record as required by Civil Local Rule 72-3. However, in substance, the Objections included a  
5 request that the Court make a de novo determination of Defendant’s motion for costs and fees, and  
6 also requested that the Court admit additional billing records. Accordingly, although Defendant did  
7 not technically comply with Local Rule 72-3 within 10 days of the Magistrate’s R&R, Defendant’s  
8 timely Objections did put Plaintiff on notice of his intent to challenge the Magistrate’s finding and  
9 the specific grounds and bases therefor. Defendant’s Objections arguably also complied with the  
10 requirements of Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1), which  
11 contemplate that the district judge “shall” and make a de novo determination after objections have  
12 been timely filed. Under these circumstances, where there is no substantial prejudice to Plaintiff,  
13 the interests of justice counsel this Court to conduct a de novo review of the Magistrate’s R&R  
14 despite Defendant’s technical noncompliance with Local Rule 72-3.

15 Accordingly, the Court **GRANTS** Defendant’s motion for leave. Defendant **SHALL** file the  
16 proposed motion (Docket No. 61, Exhibit A) **no later than Wednesday, October 17**. Plaintiff  
17 **SHALL** file its opposition to that motion **no later than Wednesday, October 24**, at which time the  
18 matter will be deemed submitted. The Court will then evaluate Defendant’s request for expansion of  
19 the record, and will also conduct a de novo review of the amount of appropriate fees. No reply brief,  
20 further submissions, or oral argument will be entertained absent further order of the Court.

21 **IT IS SO ORDERED.**

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24 Dated: October 15, 2007

  
MARTIN J. JENKINS  
UNITED STATES DISTRICT JUDGE